I should perhaps add that it was contended by the Respondent that goods could be confiscated under S. 75 (1) by executive authority without any order by the Court and that it lay with such authority to determine if necessary what was deemed by the Court. The learned D. P. P. could not specify what person or persons had been entrusted with such almost clairvoyant powers nor can I find any provision in the Enactment giving such powers to any person. The power to confiscate is clearly a judicial power to be exercised by the Court alone and where it is desired that any goods seized should be confiscated it is necessary to obtain an order from the Court to that effect. It is likely that the learned District Judge shared the view that the power to confiscate rested with the Executive and that for that reason, whilst refusing to order the rice to be returned, he contented himself with finding the facts as to the illegal import of the rice.

The Order of the District Judge will accordingly be amended to read "Rice to be confiscated under S. 75 (1) the Court deeming that an offence under S. 69 (b) has been committed in respect thereof".

Order Accordingly.

MOHAMED IBRAHIM BIN LATIFF v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Evans, J.) May 31, 1947]

Penal Code, Sections 464 and 471—Charge of fraudulently using a forged document, which the accused had reason to believed is forged—Prosecution must prove that document was forged and that forgery had been committed.

In this case the appellant appealed against a conviction under Section 471 of the Penal Code for using a forged document, which he had reason to believe to be forged, with intent to commit a fraud. The appellant was the manager of a shop which dealt in rationed goods including rice. Certain ration card holders were registered with the appellant. Subsequently a list was prepared of all the ration card holders and it later transpired that some 63 names were entered in the list which should not have been there. The appellant was convicted in respect of one name only, that is, Suyub bin Mangon. This man denied signing his name on the list.

Held, (1) that to establish the charge under Section 471 of fraudulently using a forged document it is necessary to prove that the document was forged and that forgery had been committed;

(2) that as it did not appear that it was part of the appellant's business or any duty of his to compile the list of ration holders and as the list when completed was of no value and could not be used for any purpose until it had been certified by the Food Control clerk, there was no proof that there had been an offence of forgery as against the appellant;

(3) that on the evidence there was no proof that there was any fraud on the part of the appellant.

Cases referred to:—

(1) *Ram Ghulam Singh v. Emperor* A.I.R. 1929 All. 396.

(2) *Queen Empress v. Kunju Nayar* (1889) 12 I.L.R. Madras 114.

(3) *Badan Singh v. The Crown* (1922) 3 I.L.R. Lahore 373.

(4) *Reg. v. Ritson* 1 C.C.R. 200.

CRIMINAL APPEAL FROM DISTRICT JUDGE

S. K. Das for appellant.

Ismail Khan for respondent.

Evans, J. :—The appellant in this case was the Manager of a shop in Sungei Manik. The shop dealt in rationed goods, including rice, and for that purpose certain ration card holders were registered with the appellant. A year ago, the local Food Officer is said to have ascertained that the number of ration cards was 3 times the number of the local inhabitants. If this fact be true, it is of course strong evidence of widespread fraud.

The persons most obviously likely to benefit by the fraud are the consumers. In the course of the argument, it was suggested that where a dealer, with the holder's knowledge, inserted fictitious names of non-existent persons on a card this was done entirely for his benefit. It does not seem to me likely that a person, a card holder, would become a party to a fraud, the only purpose of which is to enable somebody else to obtain quantities of rice he is not entitled to, and then to charge the holder and other consumers exorbitant prices for such rice on the black market. It seems to me that in such circumstances, the natural presumption is that the card holder commits a fraud or is a party thereto for his own benefit.

In consequence of the Food Officer's discovery, a check was made of the consumers registered with the appellant. For this purpose a man called Abdul Rahman was sent down by the Food Office, and conducted a check lasting several days. This man was an essential witness for the prosecution. It was suggested, in the course of the argument, that he was an accomplice, and that if the appellant were not the

sole criminal at least he was a party to the fraud and liable. In fact, this suggestion would make this witness the principal offender.

The check was carried out by giving Abdul Rahman all the cards registered with the appellant. Abdul Rahman then saw each card holder and marked his card as correct. This was apparently done at appellant's shop. The card holder went with the card to the appellant, who entered him on a list, and the card holder signed that list or put his thumb print on it. This list was later produced by the appellant to Abdul Rahman, who certified it as correct, and, as I understand it, that list then became the basis of supply to the appellant. It later appeared that some 63 names were entered on that list which should not have been there, and proceedings were then taken against the appellant. There seems at first to have been some allegation of cheating, but there is no formal charge of cheating on the record. He was charged with using a forged list and the 63 names are set out in the charge as forged.

This case is an illustration of what I have before had to point out—the difficulty and inappropriateness of attempting to try cases of fraud of any complexity in a Court of first instance. In such cases, every effort has been made to conceal the true facts and to make them appear otherwise. The number of police who are capable of investigating a case of fraud is extremely limited. The ascertainment of the true facts is difficult and the greatest care has to be taken to see that the charge is properly framed.

In this case the first and most obvious objection by the defence is to the charge which virtually charges appellant with 63 separate offences at once. If these names were fraudulently inserted in the list, then it is quite obvious that they may have been so inserted by somebody deceiving the man who made the list; they may be the names of existing persons who have connived with the accused; they may be the names of existing persons who know nothing of their entry; or, again, they may merely be fictitious persons. There are at least four obvious categories, apart from other differing circumstances in each case. Yet they were all made the subject of one charge.

In point of fact, the appellant was convicted in respect of one name only, and that is the name Suyub bin Mangun. Abdul Rahman, in the course of his evidence, referred specifically to this man's ration card and stated that the marking on it is his. According to the system which was employed this means that Abdul Rahman, the man responsible, was satisfied that Suyub had appeared in person, proffered this card, and it had been passed on to the accused for entry on his list. The accused is only the manager of this shop. It is true that he should know the persons to whom he supplies rationed goods, but it does not follow that the principal card holder is the person who usually takes delivery of such goods on his behalf. The evidence of Abdul Rahman would clearly establish that Suyub himself presented the card, and Abdul Rahman gave evidence for the prosecution. Suyub states that the card is not his, that when the card was prepared for him by the accused two extra names were inserted, and he then repudiated the card. He did not have the sense to destroy it, nor to return it to the Food Controller from whom he received it. He says that he then took out a second card with another dealer, Yeop Yahya. He denies the signature appearing on the list made out by the accused, and states that he cannot write Arabic. In the course of the proceedings he signed his name in Latin letters, and this is Exhibit P. 66. It is noticeable, however, that on neither of the cards did he sign his name at all. He elected, for reasons best known to himself, and about which he was not asked, to make his thumb print. On the other hand, one would have expected the check to provide for thumb-printing the card holders who had thumb-printed their cards.

The person most obviously likely to obtain advantage from the existence of duplicate cards is, of course, the consumer. The learned District Judge, however, believed the evidence of this man and found that the signature on the accused's list was false. He also found appellant presented the list at the Food Office. The only evidence of this is that he gave it to Abdul Rahman for whom he had prepared it, and Abdul Rahman certified it. He also relied on the apparent and unexplained removal in August of a large number of persons previously lodging or living in the area. This may show the deceiver or deceivers took fright in that month, when enquiries were being made. It does not show appellant was the deceiver, and not the persons with whom they may have lodged. There is clearly no evidence whatever that the signature was written by the accused. The charge is not of forgery but of using a forged document, which the accused had reason to believe is forged, with intent to commit fraud. To establish this charge it is necessary to prove that the document was forged, and therefore that forgery had been committed. The circumstances in which this document was prepared I have referred to already. It appears to be no part of the appellant's

business, nor is it, on the evidence, any duty of his that he owes to the Food Controller to compile such a document. He appears to have been acting simply as the amanuensis of Abdul Rahman. After the list was completed it was of no value and could not apparently be used for any purpose until it has been certified by Abdul Rahman. The only person who could be said to have executed this document as a whole, and as a list, was Abdul Rahman. Section 464 of the Penal Code specifies three ways in which a false document may be made and forgery committed. The only one applicable in the circumstances of this case would be the third, where a person dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person by reason of deception practised upon him does know the contents of the document. There is no evidence whatever here that the appellant practised any deception on Abdul Rahman. The substantial part of the transaction at which the list was complied was the acceptance by Abdul Rahman of the card holder as a person entitled to such card. After that the appellant seems simply to have made a list of the men present and presenting cards certified by Abdul Rahman. Suyub's signature authorises nothing and does not make P. II a document for any purpose. The signatures were apparently taken as a record of their presence. It may be a representation that the person signing had seen Abdul Rahman, but that representation is, so far as we know, a perfectly true one. Abdul Rahman certified the card as in possession of some person who might sign and later certified the complete list. The offence with which appellant is charged is that he has used this forged document as a whole, and nothing is said of the functions of the various signatures.

The fraud to which this case is most closely akin is the not uncommon one of inserting "dead men" on the pay-roll, and such frauds have been the subject of a number of reported cases. According to my experience such cases are always prosecuted as cases of obtaining by false pretences and I believe this is the usual practice. There is, however, one reported Indian case in which such fraud was unsuccessfully prosecuted as forgery, *Ram Ghulum Singh* v. *Emperor*[1]. It is not perhaps a strong case but Dalal J. made these observations which would mutatis mutandis apply here :—

> In cases under the Indian Penal Code where definitions are somewhat difficult of comprehension, illustrations are added for elucidation of such definitions. I have gone through every illustration given in S. 464 both under the main definition and under the explanations, but have failed to discover any case where a document would become a forged document if a wrong entry of payment happened to be made therein. The learned Judge has taken great pains to prove that the appellant embezzled the money of the District Board. That, however, is not a matter which can be made the subject of enquiry in this prosecution. Possibly the officials of the District Board selected Ram Ghulam Singh for the work in order to make money through him. Cheating and embezzlement, however, are distinct offences from those of forgery.

Queen Empress v. Kunju Nayar[2] and *Badan Singh v. The Crown*[3] are other cases in which an attempt was made to prosecute persons for forgery on what were in fact false entries. In the former case the Court gave this definition of forgery :—

> In order that a document should be a false document within the meaning of S. 464 of the Indian Penal Code, it must appear that it was made with the intention of inducing the belief that such document was made by or by the authority of one who did not make it or give such authority.

As has been pointed out above, Suyub's signature authorises nothing and it was Abdul Rahman's signature which alone gave the document any validity. A forged document is said to be one telling a lie about itself. It is a document made to the prejudice of another's rights, but Suyub's rights are not affected. "It is not making an instrument containing that which is false but making an instrument which purports to be that which it is not", Lord Blackburn, *Reg. v. Ritson*[4]. A document containing a false statement is not as such a forgery or most daily papers would be.

Certain frauds may be offences of more than one character. They may be both forgery and falsification of accounts. But the law of forgery was not sufficient to cover all cases of falsification and, first in England, and later in India, laws were passed to deal with falsification of accounts. Here it seems unlikely that appellant is the clerk or servant of the Food Controller or of Abdul Rahman. In cases under these laws, however, each falsification is a separate offence and is charged as such. In a case such as this, there would have been 63 separate charges, and the prosecution would be required to proceed on a reasonable number. As has been pointed out, this case closely resembles the not uncommon fraud of inserting "dead men" on the pay-roll. In cases where frauds of this nature are prosecuted as false pretences, each separate false entry is a separate false representation and a separate offence. So again in this case separate charges would have been necessary and in respect of each entry. Had the entry in respect of Suyub been the subject of a single charge, and then tried with due particularity, Abdul Rahman would presumably have been asked why his certification of Suyub's card differs from all his other certifications and is not signed. Similarly, Suyub might have been asked, had his case been made the subject of a single trial, why, when he could write, he elected to make a thumb print only on his ration cards. Such pay-rolls not

infrequently contain a column for the signature of the workmen paid, and in order to perpetrate the fraud the signature thereto might be forged. This might be a case of forgery of the receipt of the workman. Here, however, the alleged forged signature, if forged at all, simply refers back to an appearance before Abdul Rahman and has no legal effect on the rights of the parties. It is a record or representation of fact.

For all the above reasons, I am not satisfied that a fraud by the appellant has been properly proved, or that any offence of forgery has been proved, against the accused. The conviction is therefore quashed and the appellant should be discharged.

Appeal Allowed.

F. M. S. REPORTS.

POI ENG LIAN v. THE OFFICIAL ASSIGNEE, F.M.S.

[Appellate Bankruptcy Jurisdiction (Trusted, C.J., F.M.S., McElwaine, C.J., S.S. and Aitken, J. November 20, 1941]

Bankruptcy Enactment, Sections 17 (vii) 108 and 111—Bankruptcy Rules 88 and 270—Application that a bankrupt should be prosecuted under Section 108 of Bankruptcy Enactment—Application must be made by motion—Procedure at hearing—Use of notes of public examination in evidence—Whether Judge can act ex proprio motu at end of public examination and call on bankrupt to show cause.

In this case the appellant was convicted on a motion by the Official Assignee to the Court for an order under Section 108 (c) and (d) of the Bankruptcy Enactment that the bankrupt undergo imprisonment for a term not exceeding three months on the ground that (1) he has contracted debts, provable in bankruptcy without having any reasonable grounds or expectation of being able to pay and (2) he has brought on or contributed to his bankruptcy by rash speculation. At the hearing the Official Assignee had filed his notice of motion and affidavits one of which exhibited a copy of the Public Examination. The Official Assignee gave evidence and produced a certified copy of the bankrupt's public examination. The bankrupt stated that he did not wish to say anything. The appellant was thereupon convicted and sentenced to 2 months' simple imprisonment. On appeal it was argued (1) that the Judge was wrong in trying the appellant otherwise than under the provisions of the Criminal Procedure Code as required by Section 37 of the Code (2) that no charges were ever framed or if the notice of motion purported to set out charges, these charges were too wide and did not give sufficient particulars of the offence.

Held, (1) that the Criminal Procedure Code has nothing to do with a case like the present;

(2) the present appeal was an appeal in bankruptcy and the procedure adopted was correct;

(3) that under Section 111 of the Bankruptcy Enactment a charge setting forth the substance of the offence charged is not a bad charge, even if detailed particulars are not given;

(4) that the Judge should in this case have passed a sentence on each charge, instead of passing a single sentence.

Cases referred to :—

(1) *Re Chops Loh Ban Chuan and Chuan Bee* (1933) 2 M.L.J. 286.

(2) *Re Khoo Soek Wan* 11 S.S.L.R. 19.

(3) *Rex v. Scott* Dears and Bell 47.

(4) *R. v. Coote* L.R. 4 P.C. 599.

APPEAL IN BANKRUPTCY.

Charlesworth for the Appellant.

Mills for the Respondent.

McElwaine, C. J. :—Poi Eng Lian was publicly examined in Bankruptcy before Horne J. on 31st October 1940, and after the close of the examination the Judge noted "I am of opinion that the bankrupt has on his own statements in the course of this examination caused it to appear as if his bankruptcy has been brought on by rash speculation and I direct the Official Assignee to take the necessary steps to submit the matter to the Public Prosecutor."

No steps were taken by the Public Prosecutor and on 16th June 1941 one of the creditors moved the court for an order under section 110 of the Bankruptcy Enactment that the bankrupt be prosecuted under section 108 (c) and (d).

On the hearing of the motion Horne J. noted "I think the matter should be gone into more fully than it apparently has been" and he made an order in terms.

Pursuant to this Order the Official Assignee moved the Court for an order under section 108 (c) and (d) of the Bankruptcy Enactment that the bankrupt undergo imprisonment for a term not exceeding three months on the grounds that

(1) He has contracted debts provable in bankruptcy without having any reasonable ground or expectation of being able to pay;

(2) He has brought on or contributed to his bankruptcy by rash speculation.